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HOUSE BILL NO. 1727

Offered January 13, 2025

Prefiled January 4, 2025

A BILL to amend and reenact §§ 16.1-241, 20-49.1, 20-49.4, 20-124.1, 63.2-903, 63.2-1202, 63.2-1222, and 63.2-1233 of the Code of Virginia, relating to establishment of parent and child relationship; persons who committed sexual assault.

Patrons—Delaney and Price

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 20-49.1, 20-49.4, 20-124.1, 63.2-903, 63.2-1202, 63.2-1222, and 63.2-1233 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244;

6. Who is charged with a traffic infraction as defined in § 46.2-100; or

7. Who is alleged to have refused to take a blood test in violation of § 18.2-268.2.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 16 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control

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or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated by court order, either voluntarily or involuntarily, *or whose interest in the child derives from or through a person pursuant to clause (iii)*, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, *or who has been found by clear and convincing evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the person has been charged with or convicted of the alleged violation*, when the child who is the subject of the petition was conceived as a result of such violation *or conduct*. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

A1. Making specific findings of fact required by state or federal law to enable a child to apply for or receive a state or federal benefit. For the purposes of this subsection only, when the court has obtained jurisdiction over the case of any child, the court may continue to exercise its jurisdiction until such person reaches 21 years of age, for the purpose of entering findings of fact or amending past orders, to include findings of fact necessary for the person to petition the federal government for status as a special immigrant juvenile, as defined by 8 U.S.C. § 1101(a)(27)(J).

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental illness or judicial certification of eligibility for admission to a training center for persons with intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2. Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or is otherwise before the court pursuant to subdivision A 4; or
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services that are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law that causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection

shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1, 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a juvenile.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20. A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

R. [Repealed.]

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.2-1526.

U. Petitions filed in connection with parental placement adoption consent hearings pursuant to § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to an adoption when the consent to an adoption is executed pursuant to the laws of another state and the laws of that state provide for the execution of consent to an adoption in the court of the Commonwealth.

W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to seek consent of an authorized person.

After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independent of the wishes of any authorized person, or (ii) the minor is not mature enough or well enough informed to make such decision, but the desired abortion would be in her best interest.

If the judge authorizes an abortion based on the best interests of the minor, such order shall expressly state that such authorization is subject to the physician or his agent giving notice of intent to perform the abortion; however, no such notice shall be required if the judge finds that such notice would not be in the best interest of the minor. In determining whether notice is in the best interest of the minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not in the best interest of the minor if he finds that (a) one or more authorized persons with whom the minor regularly and customarily resides is abusive or neglectful and (b) every other authorized person, if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian, custodian or person standing in loco parentis.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Notwithstanding any other provision of law, the provisions of this subsection shall govern proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and records of such proceedings shall be confidential. Such proceedings shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon as practicable but in no event later than four days after the petition is filed.

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent or without notice

shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without consent of or notice to an authorized person.

Nothing contained in this subsection shall be construed to authorize a physician to perform an abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult woman.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent has been obtained or the minor delivers to the physician a court order entered pursuant to this section and the physician or his agent provides such notice as such order may require. However, neither consent nor judicial authorization nor notice shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorization" means the minor has delivered to the physician a notarized, written statement signed by an authorized person that the authorized person knows of the minor's intent to have an abortion and consents to such abortion being performed on the minor.

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor. Any person who knows he is not an authorized person and who knowingly and willfully signs an authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

"Consent" means that (i) the physician has given notice of intent to perform the abortion and has received authorization from an authorized person, or (ii) at least one authorized person is present with the minor seeking the abortion and provides written authorization to the physician, which shall be witnessed by the physician or an agent thereof. In either case, the written authorization shall be incorporated into the minor's medical record and maintained as a part thereof.

"Medical emergency" means any condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial and irreversible impairment of a major bodily function.

"Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least 24 hours previous to the performance of the abortion or (ii) the physician or his agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least 72 hours prior to the performance of the abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage entered into prior to July 1, 2024, or lawfully entered into in another state or country prior to being domiciled in the Commonwealth, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor children.

Y. Petitions involving minors filed pursuant to § 32.1-45.1 relating to obtaining a blood specimen or test results.

Z. Petitions filed pursuant to § 16.1-283.3 for review of voluntary agreements for continuation of services and support for persons who meet the eligibility criteria for the Fostering Futures program set forth in § 63.2-919.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of § 17.1-272, or subsection B, D, M, or R.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection W shall be guilty of a Class 3 misdemeanor.

Upon certification by the juvenile and domestic relations district court of any felony charge and ancillary

misdeemeanor charge committed by an adult or when an appeal of a conviction or adjudication of delinquency of an offense in the juvenile and domestic relations district court is noted, jurisdiction as to such charges shall vest in the circuit court, unless such case is reopened pursuant to § 16.1-133.1; a final judgment, order, or decree is modified, vacated, or suspended pursuant to Supreme Court of Virginia Rule 1:1; or the appeal has been withdrawn in the juvenile and domestic relations district court within 10 days pursuant to § 16.1-133.

§ 20-49.1. How parent and child relationship established.

A. The parent and child relationship between a child and a woman may be established prima facie by proof of her having given birth to the child, or as otherwise provided in this chapter.

B. The parent and child relationship between a child and a man may be established by:

1. Scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. Such genetic test results shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

2. A voluntary written statement of the father and mother made under oath acknowledging paternity and confirming that prior to signing the acknowledgment, the parties were provided with a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences arising from a signed acknowledgment, including the right to rescind. The acknowledgement may be rescinded by either party within sixty days from the date on which it was signed unless an administrative or judicial order relating to the child in an action to which the party seeking rescission was a party is entered prior to the rescission. A written statement shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown. Written acknowledgments of paternity made under oath by the father and mother prior to July 1, 1990, shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

3. In the absence of such acknowledgment or if the probability of paternity is less than ninety-eight percent, such relationship may be established as otherwise provided in this chapter.

C. The parent and child relationship between a child and an adoptive parent may be established by proof of lawful adoption.

D. No parent and child relationship shall be established when a biological parent has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, or has been found by clear and convincing evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the biological parent has been charged with or convicted of the alleged violation, and the child was conceived of such violation or conduct.

The provisions of this subsection shall not prevent the establishment of a parent and child relationship if (i) after the date of such violation or prohibited conduct, the biological parents cohabit and establish a mutual custodial environment for the child or (ii) the biological parent who would otherwise rely on this section to prevent the establishment of a parent and child relationship between the child and the biological parent who was convicted of such violation or engaged in such prohibited conduct allows such other parent to establish a parent and child relationship with such child.

§ 20-49.4. Evidence relating to parentage.

The standard of proof in any action to establish parentage shall be by clear and convincing evidence. Any statements made by a parent in a proceeding held pursuant to this chapter shall be inadmissible in a subsequent criminal proceeding relating to the conception of a child, except for purposes of impeachment. All relevant evidence on the issue of paternity shall be admissible. Such evidence may include, but shall not be limited to, the following:

1. Evidence of open cohabitation or sexual intercourse between the known parent and the alleged parent at the probable time of conception;

2. Medical or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts. If a person has been identified by the mother as the putative father of the child, the court may, and upon request of a party shall, require the child, the known parent, and the alleged parent to submit to appropriate tests;

3. The results of scientifically reliable genetic tests, including blood tests, if available, weighted with all the evidence;

4. Evidence of the alleged parent consenting to or acknowledging, by a general course of conduct, the common use of such parent's surname by the child;

5. Evidence of the alleged parent claiming the child as his child on any statement, tax return or other document filed by him with any state, local or federal government or any agency thereof;

6. A true copy of an acknowledgment pursuant to § 20-49.5; and

7. An admission by a male between the ages of fourteen and eighteen pursuant to § 20-49.6.

§ 20-124.1. Definitions.

307 As used in this chapter:

308 "Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and
309 control of the child and joint authority to make decisions concerning the child even though the child's primary
310 residence may be with only one parent, (ii) joint physical custody where both parents share physical and
311 custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court
312 deems to be in the best interest of the child.

313 "Person with a legitimate interest" shall be broadly construed and includes, but is not limited to,
314 grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members
315 provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be
316 broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not
317 include any person (i) whose parental rights have been terminated by court order, either voluntarily or
318 involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have
319 been terminated, either voluntarily or involuntarily, *or whose interest in the child derives from or through a*
320 *person pursuant to clause (iii),* including but not limited to grandparents, stepparents, former stepparents,
321 blood relatives and family members, if the child subsequently has been legally adopted, except where a final
322 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of
323 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state,
324 the United States, or any foreign jurisdiction, *or who has been found by clear and convincing evidence to*
325 *have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B of §*
326 *18.2-366, whether or not the person has been charged with or convicted of the alleged violation,* when the
327 child who is the subject of the petition was conceived as a result of such violation *or conduct*.

328 "Sole custody" means that one person retains responsibility for the care and control of a child and has
329 primary authority to make decisions concerning the child.

330 **§ 63.2-903. Entrustment agreements; adoption.**

331 A. Whenever a local board accepts custody of a child pursuant to an entrustment agreement entered into
332 under the authority of § 63.2-900, or a licensed child-placing agency accepts custody of a child pursuant to an
333 entrustment agreement entered into under the authority of § 63.2-1817, in the city or county juvenile and
334 domestic relations district court a petition for approval of the entrustment agreement (i) shall be filed within a
335 reasonable period of time, not to exceed 89 days after the execution of an entrustment agreement for less than
336 90 days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable
337 period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or
338 for an unspecified period of time, if such entrustment agreement does not provide for the termination of all
339 parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent
340 entrustment agreement which provides for the termination of all parental rights and responsibilities with
341 respect to the child.

342 B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a parent who is less than 18 years of age shall
343 be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including
344 an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully
345 bound thereby as if such parent had attained the age of 18 years. An entrustment agreement for the
346 termination of all parental rights and responsibilities shall be executed in writing and notarized. An
347 entrustment agreement for the termination of all parental rights and responsibilities with respect to the child
348 shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity
349 of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered
350 or certified mail to his last known address and fails to object to the entrustment within 15 days of mailing of
351 such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be
352 sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The
353 absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably
354 ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the
355 standard of what is reasonable under the circumstances shall control, taking into account the relative interests
356 of the child, the mother and the father.

357 C. An entrustment agreement for the termination of parental rights and responsibilities with respect to the
358 child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has
359 been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an
360 equivalent offense of another state, the United States, or any foreign jurisdiction, *or has been found by clear*
361 *and convincing evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63,*
362 *or subsection B of § 18.2-366, whether or not the birth father has been charged with or convicted of the*
363 *alleged violation,* and the child was conceived as a result of such violation *or conduct*.

364 D. A child may be placed for adoption by a licensed child-placing agency or a local board, in accordance
365 with the provisions of § 63.2-1221.

366 **§ 63.2-1202. Parental, or agency, consent required; exceptions.**

367 A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written
368 consent to the proposed adoption is filed with the petition. Such consent shall be in writing, signed under oath

and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth parent had attained the age of 18 years.

C. Consent shall be executed:

1. By the birth mother and by any man who:

a. Is an acknowledged father under § 20-49.1;

b. Is an adjudicated father under § 20-49.8;

c. Is a presumed father under subsection D; or

d. Has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.).

Verification of compliance with the notice provisions of the Virginia Birth Father Registry shall be provided to the court.

2. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903, or 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests of the child will be served by not requiring such consent.

D. A man shall be presumed to be the father of a child if:

1. He and the mother of the child are married to each other and the child is born during the marriage;

2. He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or decree of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.

Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, *or has been found by clear and convincing evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the birth father has been charged with or convicted of the alleged violation*, and the child was conceived as a result of such violation *or conduct*.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice or consent is required of any birth parent of a child for whom a guardianship order was granted when the child was approved by the United States Citizenship and Immigration Services for purposes of adoption.

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of this section, the payment of child support, in the absence of other contact with the child, shall not be considered contact.

I. A birth father of the child may consent to the termination of all of his parental rights prior to the birth of the child.

J. The failure of the nonconsenting party to appear at any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

K. If a birth parent, legal guardian, or prospective adoptee, executing a consent, entrustment, or other documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the birth parent, legal guardian, or prospective adoptee may execute a self-authenticating affidavit as to his identity subject to the penalties contained in § 63.2-1217.

L. A legal custodian of a child being placed for adoption, and any other named parties in pending cases in which the custody or visitation of such child is at issue, whether such case is in a circuit or district court, shall be entitled to proper notice of any adoption proceeding and an opportunity to be heard.

§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth.

A. For the purposes of this section, a birth parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and perform all acts related to adoption and shall be as fully bound thereby as if such birth parent had attained the age of 18 years.

B. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable or such birth father did not register with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) or the birth father named by the birth mother denies under oath and in writing the paternity of the child. An affidavit signed by the birth mother stating that the identity of the birth father is unknown may be filed with the court alleging that the identity of the birth father is not known or reasonably ascertainable. A birth father shall be given notice of the entrustment if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a putative father who has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). If the putative father's identity is reasonably ascertainable, he shall be given notice pursuant to the requirements of § 63.2-1250.

C. When a birth father is required to be given notice, he may be given notice of the entrustment by registered or certified mail to his last known address. If he fails to object to the entrustment within 15 days of the mailing of such notice, his entrustment shall not be required. An objection to an entrustment agreement shall be in writing, signed by the objecting party or counsel of record for the objecting party and filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223.

D. The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child; (iii) if another man admits, in writing and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.

E. When none of the provisions of subsections C and D apply, notice of the entrustment shall be given to the presumed father pursuant to the requirements of § 16.1-277.01.

F. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, *or has been found by clear and convincing evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the birth father has been charged with or convicted of the alleged violation*, and the child was conceived as a result of such violation *or conduct*.

G. A birth father may execute an entrustment agreement for the termination of all of his parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.

H. No entrustment shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

I. A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

J. When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. The birth parent may expressly waive, under oath and in writing, the execution of the entrustment under the requirements of §§ 63.2-1221 through 63.2-1224 in favor of the execution of an entrustment or relinquishment under the laws of another state if the birth parent is represented by independent legal counsel. Such written waiver shall expressly state that the birth parent has received independent legal counsel advising

of the laws of Virginia and of the other state and that Virginia law is expressly being waived. The waiver also shall include the name, address, and telephone number of such legal counsel. Any entrustment agreement that fails to comply with such requirements shall be void.

§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in the third calendar day of life, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father if the birth father consents under oath and in writing to the adoption.

b. The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child or if the putative father did not register with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable, verification of compliance with the Virginia Birth Father Registry shall be provided to the court.

c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the court, within the time period specified in this section. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.

d. The juvenile and domestic relations district court may accept the written consent of the birth father at the time of the child's conception or birth, provided that his identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall advise the birth father of his opportunity for legal representation, shall identify the court in which the case was or is intended to be filed, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation. For good cause shown, the court may dispense with the requirements regarding the filing of the birth father's identifying information pursuant to this subdivision 1. d.

e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father shall be executed in the juvenile and domestic relations district court.

f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required. The executed denial of paternity by the putative father shall be sufficient to rebut the presumption that he is the father of the child. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.

2. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing, the birth parent shall be given notice of the date and location of the hearing and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until 15 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents. No further consent or notice shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by counsel. If the juvenile and domestic relations district

555 court denies the petition, the juvenile and domestic relations district court shall order that any consent given
556 for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the
557 child as between the birth parents.

558 3. Except as provided in subdivisions 4 and 5, if consent cannot be obtained from at least one birth parent,
559 the juvenile and domestic relations district court shall deny the petition and determine custody of the child
560 pursuant to § 16.1-278.2.

561 4. If a child has been under the physical care and custody of the prospective adoptive parents and if both
562 birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for
563 which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court
564 may grant the petition without the consent of either birth parent and enter an order waiving consent and
565 transferring custody of the child to the prospective adoptive parents. Prior to the entry of such an order, the
566 juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by
567 clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute
568 consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good
569 cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.2-1205, the consent of the
570 birth parents is withheld contrary to the best interests of the child or is unobtainable. Under this subdivision,
571 the court or the parties may waive the requirement of the simultaneous meeting under § 63.2-1231 and the
572 requirements of subdivisions A 1, A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not
573 reasonably available under the applicable circumstances.

574 5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing
575 evidence to that effect, may grant the petition without the filing of any consent.

576 6. No consent shall be required from the birth father of a child placed pursuant to this section when such
577 father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an
578 equivalent offense of another state, the United States, or any foreign jurisdiction, *or has been found by clear*
579 *and convincing evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63,*
580 *or subsection B of § 18.2-366, whether or not the birth father has been charged with or convicted of the*
581 *alleged violation*, and the child was conceived as a result of such violation *or conduct*, nor shall the birth
582 father be entitled to notice of any of the proceedings under this section.

583 7. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the
584 child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is
585 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with the respect to
586 the adoption of the child and cannot be withdrawn.

587 8. A birth father may consent to the adoption prior to the birth of the child.

588 9. The juvenile and domestic relations district court shall review each order entered under this section at
589 least annually until such time as the final order of adoption is entered.

590 10. When there has been an interstate transfer of the child in a parental placement adoption in compliance
591 with Chapter 10 (§ 63.2-1000 et seq.) of this title, all matters relating to the adoption of the child including,
592 but not limited to, custody and parentage shall be determined in the court of appropriate jurisdiction in the
593 state that was approved for finalization of the adoption by the interstate compact authorities.